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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91248894
Party	Defendant Oovee Ltd
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Attachments	Appl-0113 Reply Brief.pdf(33250 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 79/248,677

Saber Interactive, Inc. N/K/A S3D Interactive, Inc. Opposer,	:	
-against-	:	Opposition No. 91248894
Oovee Ltd Applicant.	:	

Submitted via ESTTA

OOVEE LTD'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Applicant, Oovee Ltd ("Oovee"), owner of U.S. Trademark Application No. 79/248,677, submits a reply to the Opposition to Applicant's Motion for Summary Judgment submitted by Opposer, Saber Interactive, Inc. N/K/A S3D Interactive, Inc. ("Saber").

Saber's opposition to Oovee's motion for summary judgment reflects a basic misunderstanding of the relevant law and refers to facts which are immaterial to the present motion, as well as immaterial to the opposition itself.

1. Irrelevant Facts Raised by Saber

Saber attempts to confuse the issue before the Board by introducing new "facts" referring to marks that are not at issue in this proceeding, such as MUDRUNNER and SNOWRUNNER. Saber Brief at 4, 6, 11. These marks are completely distinct and not likely to be confused with SPINTIRES. There are contractual disputes between Oovee and entities related to Saber separate

from the registration of the SPINTIRES mark, but those disputes are before different tribunals, involve different marks, different issues, and different entities. Saber wants the Board to consider facts related to rights outside of the US and unrelated to the US registration of SPINTIRES as being somehow relevant to the matter at hand.

2. Saber has No Commercial Interest in the SPINTIRES mark

In its response, Saber has confused the question of standing with that of priority of use. Saber Brief at 1, 5, 13. The issue before the Board is whether Saber has a reasonable belief that it will be damaged by the registration of the SPINTIRES mark. Without a reasonable belief, Saber is a mere intermeddler with respect to Oovee's right to register the SPINTIRES mark.

Saber has not disputed the fact that Saber and its related entities are not using the SPINTIRES mark, have no plans to use the SPINTIRES mark, and ceased using the SPINTIRES mark in December of 2018. Saber concedes that "Opposer ceased use of the SPINTIRES term in connection with the MUDRUNNER game after the termination of such agreement on December 22, 2018." Saber Brief at 3 (emphasis in original).

Having no use or plans to use the SPINTIRES mark, Saber fails to meet the zone-of-interests requirement of *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), recently re-affirmed by the Federal Circuit as the governing test for standing. *Corcamore, LLC v. SFM, LLC*, -- F.3d --, 2020 USPQ2d 11277 (CAFC 2020). Both the zone-of-interest test of *Lexmark* and the real interest test of *Empresa Cubana Del Tabaco v. General Cigar Co.*, 753 F. 3d 1270, 1274 (CAFC 2014), cert. denied, 135 S. Ct. 1401 (2015) can be satisfied by showing a commercial interest that will be proximately damaged by the registration of the mark at issue.

Saber's claim fails both tests, as there is no proximate causation between Oovee's desired registration of the SPINTIRES mark, and the damage Saber alleges, namely some tenuous impact on Saber's applications to register other marks in other countries. Unlike in *Corcamore*, where the marks were substantially similar, here Saber has not pled, nor could it, that the mark SPINTIRES and MUDRUNNER are even remotely similar.

3. "Rightful Owner" of the SPINTIRES mark.

Saber argues its interest in opposing registration is that Oovee was not the rightful owner of the mark as of the date of the SPINTIRES application. Saber Brief at 13. As the SPINTIRES application, an extension of protection filed under Section 66(a), is not based upon use of the mark, Saber's allegation of non-ownership does not constitute a valid basis for opposition under TTAB precedent. *Norris v. PAVE: Promoting Awareness, Victim Empowerment*, 2019 WL 4785638 (T.T.A.B. 2019). In *Norris*, the Board held that "a claim that an applicant is not the rightful 'owner' of the applied-for mark is not available when the application is not based on use of the mark in commerce." 2019 WL 4785638, *5. Whether or not Saber's abandonment of the SPINTIRES mark occurred after the filing date of the SPINTIRES application is irrelevant.

Conclusion

Saber is not using the SPINTIRES mark and has no intention of using the SPINTIRES mark. Therefore, Saber is nothing but a mere intermeddler having no real commercial interest that would be affected by the registration of the SPINTIRES mark.

WHEREFORE, Oovee, by its attorneys, requests that its motion for summary judgment be granted and the opposition proceeding be dismissed with prejudice.

Respectfully submitted,

Dated: December 14, 2020

By: __/MichaelJBrown/_____

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2020, I served the foregoing document on the Opposer by electronic mail, addressed to Opposer's correspondence address of record as follows:

ajremore@csglaw.com; trademarks@csglaw.com; tmdocketing@csglaw.com

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